

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., 10th Floor
San Francisco, California 94102**

NOTICE OF AVAILABILITY OF CHANGED TEXT

Date: March 23, 2000

On January 7, 2000, the Director of Industrial Relations for the State of California (Director) issued a Notice of Proposed Action and Notice of Public Hearing, proposing the adoption of regulations pertaining to the assessment of civil penalties in connection with safety and health violations in the workplace. On February 22, 2000, the Director held a public hearing and received oral and written public comment in response to the Notice.

PUBLIC COMMENT INVITED:

In response to public comment, the Director has made changes to certain provisions of the proposed rulemaking, and now solicits written comments on those changes only, which are attached. Comments submitted on unchanged portions of the regulations will not be considered.

The Director believes that the changes made are either nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. Accordingly, pursuant to the provisions of California Government Code Section 11346.8(c), the Director is soliciting written public comment on the changes. A copy of the changes, with the proposed changes clearly indicated, is available for public comment for at least 15 days. Deletions are indicated in ~~double strike-out~~; additions are indicated in double underline.

CONTACT PERSON:

All written comments submitted in response to this Notice and all questions regarding this Notice should be directed to:

Nicholas A. Champlin, Staff Counsel
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102
(415) 703-5080

SUBMISSION OF WRITTEN COMMENTS:

All written comments on the changes **must be received by the Director at the address listed above no later than 5:00 p.m. on Friday, April 7, 2000.**

AUTOMATIC MAILING:

A copy of this notice, together with the text of the proposed regulations, will automatically be sent to all those who testified at the public hearing, all those who submitted written comments at the public hearing, all persons whose comments were received during the public comment period, all persons who submitted written requests for copies of information regarding the rulemaking, and all persons who requested notification of the availability of such changes.

PROPOSED CHANGES:

As a result of the public comment received, the Director has decided to amend the proposed regulations as follows:

Amended Section 334(d)(4): This subsection is amended to delete the reference to appeals before the Occupational Safety and Health Appeals Board in the context of computing time frames for repeat violations. Instead, language was added to clarify that for the purposes of repeat violations, the time period for computing (set forth in Sections 334(d)(1) or (d)(2)) is governed by the date that the previous violation becomes a final order of the Appeals Board.

Amended Section 334(h): This subsection is amended to delete the words “Egregious Violation” in the section title and replace it with “Civil Penalties on a Violation-by-Violation Basis”.

Amended Section 336(l): This subsection is amended to include language clarifying that, for purposes of achieving settlement by means of unclassifying a violation, the employer is not required to provide enhancements or monetary contributions. This subsection is also amended to clarify that such monetary contributions shall not be paid to the Division or to the Department. Also, this subsection adds language specifying that any settlement proposed by the Division that purports to unclassify a violation shall be done so only with the concurrence of the employer.

Dated: March 23, 2000

STEPHEN J. SMITH
Director of Industrial Relations

NICHOLAS A. CHAMPLIN
Staff Counsel

STATE OF CALIFORNIA
DEPARTMENT OF OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
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TEXT OF REGULATIONS

DIRECTOR OF THE DEPARTMENT OF INDUSTRIAL RELATIONS, TITLE
8, CALIFORNIA CODE OF REGULATIONS

Chapter 3.2. California Occupational Safety and Health
Regulations (CAL/OSHA)

Subchapter 1. Regulations of the Director of Industrial
Relations; Article 4. Proposed Penalty Procedure

§334. Classification of Violations and Definitions.

For purposes of penalty assessments, violations of occupational safety and health standards, violations of California Health and Safety Code Sections 2950 and 25910, orders, special orders and regulations are classified as follows:

(a) Regulatory Violation--is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

(b) General Violation--is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

(c) Serious Violation.

(1) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:

(A) a A serious exposure exceeding an established permissible exposure limit or

(B) a A condition which exists, or from one or more practices, means, methods, operations, or processes

which have been adopted or are in use, in the place of employment.

(2) ~~unless~~ Notwithstanding subsection (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) As used in subsection (c)(1), "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.

~~(e) (2)~~ (4) For Carcinogens--is a violation of any standard, order, or special order respecting the use of a carcinogen, as defined in 8 Cal. ~~Adm. Code~~ California Code of Regulations 330(f). However, the violation shall not be considered serious if the employer can demonstrate that he did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or he can demonstrate that the Division should have determined that the violation was minor and resulted in no substantial health hazard.

(d) Repeat Violation

(1) General--is a violation where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation again within a period of three years immediately preceding the latter violation. ~~For the purpose of considering whether a violation is repeated, a repeat citation issued to employers having fixed establishments (e.g., factories, terminals, stores . . .) will be limited to the cited establishment; for employers engaged in businesses having no fixed establishments (e.g., construction, painting, excavation . . .) a repeat violation will be based on prior violations cited within the same Region of the Division.~~

(2) Field Sanitation Violations--Is a violation of the State Field Sanitation Standard, currently set forth in 8 CCR 3457, or of the Federal Field Sanitation Standard, currently set forth in 29 CFR 1928.110, where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation within a period of five years immediately preceding the latter violation.

(3) For the purpose of considering whether a violation is repeated, a repeat violation will be based on prior violations cited within the State.

~~(4) When the prior violation has been appealed to the California Occupational Safety and Health Appeals Board, For purposes of computing a repeat violation, the time period set forth in subsection (d)(1) or (d)(2) shall be computed from the date that the previous violation becomes a final order of the California Occupational Safety and Health Appeals Board. of the final order sustaining the existence of the violation.~~

(e) Willful Violation--is a violation where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what he is doing constitutes a violation of a safety law; or, even though the employer was not consciously violating a safety law, he was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

(f) Abatement Date--is the date by which the employer is allowed and required to correct the condition constituting the violation.

(g) Unclassified Violation

(1) In contested cases in which a good faith dispute exists concerning the sufficiency of evidence to establish the classification of the violation, the Division may, subject to the employer's concurrence, modify the characterization of the violation to unclassified.

(2) For purposes of evaluating history pursuant to the provisions of section 335(d), if a violation classified in part as willful or repeat under subsections (d) or (e) of this section is unclassified, the violation shall be considered serious, general, or regulatory, consistent with the Division's initial determination. If a violation classified as serious under the provisions of subsection (c) of this section is unclassified, the violation shall be considered serious for purposes of evaluating history pursuant to section 335(d).

(h) ~~Egregious Violation~~ Civil Penalties on a Violation-by Violation Basis

(1) In cases where the evidence shows that the employer has committed an egregious violation, the Division may assess a civil penalty on a violation-by-violation basis and shall calculate such penalty according to the number of instances of non-compliance or the number of employees subject to the violative condition as if each were a separate violation.

(2) For purposes of this subsection, an egregious violation is a willful violation (as provided in section 334(e) of this article) where the employer has exhibited

flagrant bad faith or an intentional disregard of its duties under the California Occupational Safety and Health Act.

NOTE: Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Sections 6302(i), 6319, 6432 and 6712, Labor Code; and Sections 2950 and 25910, Health and Safety Code.

§335.1 Factors Considered in Assessing Civil Penalties of Permanent Amusement Ride Violations

For purposes of assessing civil penalties with reference to permanent amusement ride violations, Section 335, pertaining to factors considered in assessing civil penalties, shall also include exposures to members of the public.

NOTE: Authority cited: Sections 54, 55, ~~and~~ 6319, and 7923 Labor Code. Reference: Sections 6302(i), 6319, 6432 ~~and~~, 6712, and 7931 Labor Code; and Sections 2950 and 25910, Health and Safety Code.

§336. Assessment of Civil Penalties.

Civil penalties for Regulatory, General, Serious, Repeat, Willful, and Failure to Abate violations shall be assessed in the following manner:

(a) Regulatory Violation--

(1) In General--Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$7000 for each such violation. Except as set forth in parts (2) through (4) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens--A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits--Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration--Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(b) General Violation--Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$7000 for each such violation.

Gravity of a General Violation--The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW-- The Base Penalty shall be \$1,000.

MEDIUM-- The Base Penalty shall be \$1,500.

HIGH-- The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW-- 25% of the Base Penalty shall be subtracted.

MEDIUM-- No adjustment shall be made.

HIGH-- 25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW-- 25% of the Base Penalty shall be subtracted.

MEDIUM-- No adjustment shall be made.

HIGH-- 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(c) Serious Violation

(1) In General--Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to ~~\$7,000~~ \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of ~~\$5,000~~ \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW-- 25% of the Base Penalty shall be subtracted.

MEDIUM-- No adjustment shall be made.

HIGH-- 25% of the Base Penalty shall be added.

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW-- 25% of the Base Penalty shall be subtracted.

MEDIUM-- No adjustment shall be made.

HIGH-- 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) For Carcinogens--Any employer who violates any occupational safety and health standard, order, or special order respecting the use of a carcinogen, and such violation is determined to be a Serious violation (as provided in section 334(c)(~~2~~) (4) of this article) shall be assessed a total civil penalty of \$2000 for each such violation. This penalty is not subject to adjustment.

(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure--If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as

set forth in subsection (d)(1) of this section. The penalty shall not exceed ~~\$7,000~~ \$25,000.

(4) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use.

Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

(5) For Tower Cranes--Any employer who violates any tower crane standard, order or special order and such violation is determined to be a serious violation (as provided in section 334(c)(2)(1) of this article) shall be assessed a penalty of \$2,000. The penalty shall not be subject to adjustment as set forth in subsections (d) and (e) of this section.

(d) Further Adjustment of Regulatory, General, and Serious Violations--Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer	--	40% of the Gravity-based employees	Penalty shall be subtracted.
11-25	--	30% of the Gravity-based employees	Penalty shall be subtracted.
26-60	--	20% of the Gravity-based employees	Penalty shall be subtracted.
61-100	--	10% of the Gravity-based employees	Penalty shall be subtracted.
More than	--	100 employees	No adjustment shall be made.

(2) The Good Faith of the Employer--If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD--	30% of the Gravity-based Penalty shall be subtracted.
FAIR--	15% of the Gravity-based Penalty shall be subtracted.
POOR--	No adjustment shall be made.

(3) The History of Previous Violations--If the employer's History of Compliance (as provided under section 335(d) of this article) is:

GOOD-- 10% of the Gravity-based Penalty shall be subtracted.

FAIR-- 5% of the Gravity-based Penalty shall be subtracted.

POOR-- No adjustment shall be made.

Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen--The penalty for any Serious violation respecting the use of a carcinogen as set forth in subsection (c)(2) of this section is not subject to adjustment pursuant to this subsection and shall not be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements--The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure--Subject to the provisions of subsection (c)(3) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program--The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement--Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations--The Adjusted Penalty for General and Serious violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. The following types of violations are not subject to an abatement credit:

- (1) Violations designated as Repeat or Willful;
- (2) Serious violations for which extent and likelihood are rated high;
- (3) Serious violations respecting the use of a carcinogen; and
- (4) Serious violation causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) Penalty for Failure to Abate Regulatory, General or Serious Violations--If the employer fails to abate the

violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a ~~Serious~~ violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be rescinded and this amount assessed as part of the failure to abate penalty ~~(for Serious violations this amount shall not exceed the difference between \$7,000 minus the initial proposed penalty)~~. In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. The daily additional penalty for failure to abate a violation shall not exceed ~~\$7,000~~ \$15,000.

Limitations:

(1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.

(2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.

(3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure--If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted

pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.

(4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury--If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.

(5) False Declaration of Abatement--If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation--

(1) In General--If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:

1st repeat-- the Proposed Penalty is multiplied by two.

2nd repeat-- the Proposed Penalty is multiplied by four.

3rd repeat-- the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$70,000.

2) For Carcinogens--If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st repeat-- \$5,000

2nd repeat-- \$10,000

3rd repeat-- \$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st repeat-- \$10,000

2nd repeat-- \$20,000

3rd repeat-- \$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure--The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part

(1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation--If a Regulatory, General, or Serious violation is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

~~Regulatory and, General --the Proposed Penalty is multiplied by five.~~

and Serious--the Proposed Penalty is multiplied by ~~ten~~ five. However, the penalty for any willful violation shall not be less than \$5,000 and shall not exceed \$70,000.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure--The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury--If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has determined that the violation caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(j) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

(k) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(1) This subsection does not apply to any penalty assessed for a Serious, Willful or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

(1) (1) If the Division proposes to unclassify a violation, the civil penalty proposed as a result thereof may not be higher than the than the initial proposed civil penalty based upon the formerly classified violation or

lower than the civil penalty permitted based upon the resulting classification of the violation for purposes of history.

(2) In the context of any settlement, the employer may elect, but is not required, to provide any enhancements to promote occupational safety and health in the community, including monetary contributions proposed by the employer, which shall not be considered civil penalties for purposes of this article. In no case shall such monetary contributions be paid to the Division or to the Department.

(3) The Division shall propose a civil penalty based upon the evidence concerning the violation, including the existence thereof, and the penalty factors of gravity of the violation, size of business, good faith of the employer, history of previous violations, and abatement of the violative condition. However, the Division shall not be bound by the regulatory formula set forth in subsections (a) through (k) of this section, unless otherwise required by statute. ~~The employer must concur with the Division's proposed civil penalty for the unclassified violation.~~

(4) Any Division settlement proposing to unclassify a violation cannot occur in the absence of the employer's concurrence with the terms of such proposal.

(5) As a condition precedent to unclassifying a violation, the grounds therefor must be submitted through Division management for review and approval by the Chief.

NOTE: Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7, and 9060 Labor Code.
Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6427-6432, 6434, 6511, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.